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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

N.B.,

Petitioner,

v.

THE SUPERIOR COURT OF  
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Real Party in Interest.

F058556

(Super. Ct. No. 515423)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Nancy B. Williamsen, Commissioner.

Maria Elena Ramos for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Linda S. Macy, Deputy County Counsel, for Real Party in Interest.

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\*Before Wiseman, Acting P.J., Dawson, J., and Poochigian, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing<sup>1</sup> as to her son W. We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

Petitioner is a 30-year-old mother of three sons, R., T. and W., the subject of this writ petition. At the age of 14, she began using methamphetamine and was diagnosed with epilepsy. She has an extensive history of homelessness and child neglect and has not raised any of her sons. In 1999, R., then two years of age, was placed with his paternal grandmother because of petitioner's drug use and T. was placed with his father.

In May 2006, petitioner gave birth to W. During her pregnancy, she drank alcohol and used methamphetamine, heroin and marijuana. From July 2006 to October 2007, petitioner was provided voluntary services and lived with W. in a clean and sober environment. She completed voluntary services and the Stanislaus County Community Services Agency (agency) helped her obtain section 8 housing. During this time, petitioner received the emotional support of her only living relative, an uncle. However, he died in November 2007, leaving her without family support. After a period of sobriety, petitioner relapsed in February 2008.

In January 2009, the agency received a report that petitioner and then two-year-old W. were living in a home with no water or electricity and where trash, broken glass and knives lie on the floor. There was little food in the house and W. was observed to be dirty and wearing dirty clothes. Petitioner was seen smoking from a glass pipe and reportedly slept all day. Many people were observed coming to and leaving the home throughout the night.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Initially, the agency could not locate petitioner because she was evicted from her section 8 housing because of the “traffic.” However, an emergency response social worker located her in early February 2009 at a children’s crisis center. Petitioner said she was staying in motels and with friends but was also homeless at times.

The following day, the social worker met with petitioner again. During that visit, the social worker noted that petitioner failed to engage with W. and there seemed to be an insecure attachment between mother and child. Petitioner told the social worker she did not know the identity of W.’s father. The social worker arranged for petitioner to stay in a motel for five nights on the condition she submit to a drug test on the fifth day. Petitioner tested positive for methamphetamine but refused voluntary services, including substance abuse treatment.

In mid-February 2009, the agency took W. into protective custody and filed a dependency petition on his behalf, which the juvenile court sustained. In its report for the jurisdictional hearing, set for March 2009, the agency reported that petitioner and her boyfriend, Don, were involved in a domestic violence incident approximately a week after W. was removed. Don was arrested and petitioner told the arresting officer she and Don used crystal methamphetamine the day before. She also told a substance abuse evaluator that she had been using methamphetamine daily for a year and had participated in eight different substance abuse treatment programs. As a result, she was referred to Stanislaus Recovery Center (SRC) where she was admitted in early March.

The juvenile court conducted a combined jurisdictional/dispositional hearing in April 2009 at which time it exercised its dependency jurisdiction, ordered W. removed from petitioner’s custody, and ordered petitioner to participate in a plan of reunification. Petitioner’s reunification plan required her to participate in grief and parenting counseling, inpatient substance abuse treatment, attend weekly Alcoholics Anonymous

(AA) meetings and submit to random drug testing. The court set the six-month review hearing for September 2009.

In March 2009, petitioner graduated from SRC and transitioned to Redwood Family Center clean and sober facility (Redwood) while attending day treatment at SRC. However, her epileptic seizures increased in frequency, sometimes occurring multiple times a day, and in severity, resulting in four emergency visits to the hospital in April. As a result, SRC and Redwood medically discharged petitioner in April 2009 and required her to obtain a medical clearance to return. Upon discharge, petitioner went to live with a new boyfriend and his aunt. She told her caseworker she was struggling with her sobriety in her boyfriend's home because there was drug trafficking there. In an effort to refrain from drug use, petitioner roamed the streets during the day.

In an interim report filed in June 2009, the agency reported petitioner's situation was dire. She required a medical clearance to return to treatment but was unable to pay for a doctor's visit because she did not have medical insurance. For the same reason, she could not afford her seizure medication. After a lengthy process, petitioner obtained medical insurance in early June but could not get an appointment until July. Meanwhile, she was living in a home which was not conducive to her sobriety and maintaining unhealthy relationships with Don and the new boyfriend out of necessity. The agency acknowledged, however, petitioner had few options and the situation was taking its toll on her as she appeared increasingly depressed. Despite her circumstances, however, petitioner visited W. weekly and W. enjoyed visiting petitioner.

In August 2009, the agency filed its six-month status review, opining that petitioner's situation was worse than what it was when W. was initially removed. She was homeless and "slamming" methamphetamine daily and still was not medically cleared to return to drug treatment. Though recognizing petitioner made a strong effort in the beginning and lacked support, the agency recommended the court terminate her

services because she inexcusably delayed starting her parenting class and counseling until August and because W.'s safety and well-being warranted proceeding to permanency planning.

Petitioner challenged the agency's recommendation at a contested six-month review hearing conducted in September 2009. She testified she made every effort to obtain a medical clearance. Once she obtained medical insurance, she was evaluated by a doctor and then scheduled for a follow up appointment in late August so the doctor could check her medication levels before giving her a medical clearance. Petitioner kept her August appointment, but was told at the doctor's office that her medical insurance had expired. That same day, she renewed it and contacted the doctor's office. In mid-September, she was given a medical clearance.

After receiving her medical clearance, petitioner testified, she remained at Don's house. However, four days after receiving her clearance, she signed up to live at a mission. Her plan was to live at the mission and return to SRC. However, when she returned to Don's house to collect her belongings, she and Don fought. Petitioner left to call the police and when she returned, Don had a slash on his face, which he claimed petitioner inflicted. Petitioner was arrested and incarcerated. She was awaiting sentencing on a misdemeanor charge.

Petitioner testified her caseworker never offered her any hotel or motel vouchers or any housing referrals. Nor did the caseworker offer to pay for a doctor's appointment so petitioner could get a medical clearance.

Regarding her parenting attendance, petitioner testified she mistakenly thought the classes were on Wednesdays when they were in fact conducted on Thursdays. She also had difficulty attending her classes at times when she and Don fought. When that occurred, she stayed out of town and arrived late to class. Petitioner testified she sometimes had transportation problems but her caseworker offered her bus passes.

Petitioner never told her caseworker she could not get to her appointments or that she needed help.

Petitioner also testified about her relapse following her discharge from SRC and Redwoods. She explained she was homeless and afraid for her safety if she slept out in the open so she took drugs to stay awake at night. While living on the streets, she attended some AA meetings and went to church sometimes. A sign-in card showing she attended meetings from early August until early September was received into evidence.

On cross-examination by county counsel, petitioner testified she had been clean and sober a couple of times in her life, the last time being at age 26. Asked why she relapsed, she said she felt lost after her uncle died. She started using drugs and could not pull herself back up. She said she last used methamphetamine the week before the hearing.

Petitioner's caseworker testified that after petitioner was discharged from Redwood in April, petitioner told her she was staying with friends and a boyfriend. The caseworker never thought petitioner was living on the street, but believed she was always living with someone. She said petitioner did not specifically ask for housing assistance but they discussed that a hotel voucher was not available through the agency. After petitioner received her medical clearance, she and the caseworker discussed her staying at the mission, which was the only resource the agency could offer. Petitioner told the caseworker she wanted to stay at her boyfriend's aunt's home instead of the mission. The agency van dropped petitioner off at the aunt's house and that was the last time the caseworker saw her.

On cross-examination by petitioner's attorney, the caseworker testified she did not know whether the mission required petitioner to have a medical clearance and did not inquire. Nor did she ever specifically ask petitioner if she was sleeping on the streets.

At the conclusion of the hearing, the juvenile court found petitioner was provided reasonable services but failed to regularly participate in them and make substantive progress. The court also found there was not a substantial probability W. could be returned to petitioner's custody with continued services. Consequently, the court terminated petitioner's reunification services and set a hearing to implement a permanent plan. This petition ensued.

## **DISCUSSION**

### ***A. Regular Participation and Substantive Progress***

Petitioner contends she regularly participated in and made substantive progress in her court-ordered services until she was discharged from drug treatment because of her epileptic seizures, a circumstance over which, she claims, she had no control. Consequently, she argues, the juvenile court's finding she did not regularly participate in and make substantive progress in her court ordered services is error.

Section 366.21, subdivision (e) pertains and provides in relevant part:

"If the child was under three years of age on the date of initial removal, ... and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 .... If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal ...., may be returned to his or her parent ... within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing."

We review the juvenile court's orders and findings for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379) On review of this record, as summarized above, we concur in the juvenile court's finding.

A parent's participation and progress in court-ordered services are judged on the totality of the circumstances. In this case, petitioner focuses on her interrupted drug

treatment but ignores the facts that she did not continue to regularly attend AA meetings and did not start participating in personal counseling and parenting instruction until August 2009. We conclude, based on the totality of petitioner's efforts, the juvenile court properly found she did not regularly participate in and make substantive progress in her court-ordered treatment plan.

***B. Reasonableness of Services***

Petitioner contends the juvenile court erred in finding she was provided reasonable services. Services are reasonable when the supervising agency identifies the circumstances leading to the child's removal from parental custody, offers services tailored to remedy those problems, maintains reasonable contact with the parent, and makes reasonable efforts to assist the parent if compliance with the plan proves to be difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The standard on review is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 415.) In this case, we conclude petitioner was provided reasonable services.

Petitioner argues her need for a medical clearance made compliance with her case plan difficult and her caseworker did not make reasonable efforts to help her obtain one. She claims, for example, the caseworker could have provided her information on medical insurance and free medical clinics, offered to pay for her medical appointments, and/or provided transportation to the medical appointments.

The appellate record supports petitioner's claim the caseworker did not directly help her obtain her medical clearance. However, we cannot say the caseworker's failure to assist was unreasonable under these circumstances. Apparently, petitioner did not need assistance applying for medical insurance because she did so twice. Once insured, she had no difficulty making an appointment. The problem was that it was scheduled two months out, apparently the standard procedure in that office for new patients. However,

there is no evidence any intervention by the caseworker would have caused petitioner to be medically evaluated sooner. Conversely, there was evidence petitioner could have but chose not to take advantage of a walk-in clinic conducted once a week. Had she done so, she may have obtained her medical clearance sooner.

Finally, there is no evidence petitioner needed the agency to pay for her medical appointments or that the agency was authorized to do so nor is there evidence petitioner needed transportation to and from her appointments. Consequently, we concur in the juvenile court's finding petitioner was provided reasonable services.

***C. Substantial Probability of Return***

Petitioner contends the juvenile court erred in finding she failed to regularly participate in and make substantive progress in her court-ordered services and there was not a substantial probability of return. Under the statutory scheme for dependent children, the court has discretion to extend services beyond 12 months *only* if it finds there is a substantial probability that the minor will be returned to parental custody and safely maintained in the home within the extended period of time, or if it finds that reasonable services have not been provided to the parent. (§§ 361.5, subd. (a); 366.21, subd. (g)(1).) Having concluded petitioner was provided reasonable services, we are concerned only with the court's finding there was not a substantial probability of return within the extended time period.

In assessing whether there is a substantial probability of return, the juvenile court must consider the parent's capacity to meet the objectives of the case plan and provide a safe home for the child. (§ 366.21, subd. (g)(1)(C).) On this record, the court had ample cause to question petitioner's ability to assume custody of W. and provide for his safety even with extended services. Petitioner has a long history of drug abuse, homelessness and child neglect. As the juvenile court noted, she was really no further along in resolving these issues at the six-month review of services than she was when dependency

jurisdiction was taken. Given petitioner's lack of progress and poor prognosis, the juvenile court properly found there was not a substantial probability of return. Accordingly, we affirm its findings and orders terminating petitioner's reunification services and setting a section 366.26 hearing.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.